



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

November 6, 2018

Greenway Capitola—Local Voices, Local Choices, Vote Yes for Capitola's Future
Via email at: greenwaycapitola@gmail.com

RE: FPPC No. 2018-01259; Greenway Capitola—Local Voices, Local Choices, Vote Yes for Capitola's Future

Dear Committee:

This letter is to notify you that the Enforcement Division of the Fair Political Practices Commission will investigate the allegation(s), under the jurisdiction of the Commission, of the complaint submitted against you. However, please be advised that at this time we have not made any determination about the validity of the allegation(s) made or about the culpability, if any, of the person(s) identified in the complaint.

If you have any questions regarding this letter, you may contact Chloe Hackert at chackert@fppc.ca.gov.

Sincerely,

GW
West

Galena West, Chief
Enforcement Division

GW/ch

Enclosure (copy of complaint)

10/29/18

Non-sworn Complaint to the FPPC, submitted 10/29/18 via the FPPC Electronic Complaint System website by Linda Wilshusen.

Respondents:

Greenway Capitola-The Better Way

Greenway Capitola-Local Voices, Local Choices, Vote Yes for Capitola's Future
FPPC#1404243

Violation Type: Statement of Organization

Explanation of Violation:

Greenway Capitola-The Better Way registered in April, 2018 as a General Purpose City Committee with its description of activity as "educating the citizens of Capitola about measures and candidates on the ballot." This Committee's 7/31/18 semi-annual Form 460 Campaign Statement for the period 1/1/2018 – 6/30/18 included expenditures related to a ballot measure initiative drive, and after surviving a court challenge by the City of Capitola, the initiative was placed on the ballot in August 2018 as Measure L. This Committee never changed its status to a Primarily Formed Committee, even though it is listed as the entity which has paid for campaign literature, advertising, etc., and which continued to file 460's in the subsequent two pre-election reporting periods. The City Clerk warned the Committee by email on September 28, 2018 (attached), of the requirements for a Primarily Formed Committee, including the requirement that General Purpose Committees not spend more than 70% on a single ballot measure. The City Clerk contacted the Committee again on October 26, 2018 (attached), subsequent to the second pre-election 460 filing October 25, 2018, and subsequent to being advised by the FPPC that she is "required by state law to report any apparent filing violations." (The attached emails were obtained via a public records request.) By not changing its Committee status as required by state law, the Committee avoided required 24-hour contribution disclosures; violated state law by listing campaign expenditures as independent expenditures; violated state law by not including accrued and non-monetary expenditures in its reporting; and otherwise tried to mislead the City and the voting public.

Violation Type: Campaign Reporting Inaccurate/Incomplete

Explanation of Violation:

The Greenway Capitola second pre-election Form 460 for the period 9/23/18 – 10/20/18 contains violations for expenditure and contribution reporting. This statement incorrectly lists \$5,381 of "Yes on Measure L" expenditures on Schedule D as "Independent Expenditures". It also lists Independent Expenditures toward candidates and ballot measures in other, not-adjacent cities (Scotts Valley), which is not consistent with the Committee's stated activities. Neither the first nor the second pre-election statements identify legal fees (either paid or accrued, which are

presumably substantive due to the City challenging the legality of the proposed measure); payments to canvassers and other paid (verifiable) campaign laborers; and website development and maintenance. On the contribution side, Santa Cruz County Greenway, a 501(c)(4) organization engaged in identical activities countywide as the Committee is engaged in within the City of Capitola, is listed in the semi-annual and first 2018 pre-election statements as contributing \$9,500 toward the Committee, but it is not identified as providing non-monetary contributions, which could be substantial: this organization has paid staff who have been visibly active in the campaign, including authoring a solicited opinion piece for a local newspaper (attached). The volume of campaign signs, mailers, and other materials is seemingly beyond the stated contribution total listed in the 460s. Given the warnings issued by the City Clerk, it's doubtful that these violations of FPPC law were unintentional. The 460s indicate no accrued expenses or non-monetary contributions.

Violation Type: Unidentified Advertising or Mailer

Explanation of Violation:

As of the date of this filing, Greenway Capitola's website <https://greenwaycapitola.org/> does not contain any disclaimer or Committee name or FPPC#. The only identifier on the website is in a link to the Santa Cruz County Greenway website, sponsored by that organization. A notice was filed on 10/29/18 on the FPPC AdWATCH website.

Submitted by Linda Wilshusen, [REDACTED]
[REDACTED]

Witness: Dennis Norton, [REDACTED]
[REDACTED]

Attachments: Two emails from Capitola City Clerk Linda Fridy to Greenway Capitola dated 9/28/18 and 10/26/18. Image of Capitola Soquel Times op-ed author notation.

Fridy, Linda (lfridy@ci.capitola.ca.us)

From: Fridy, Linda (lfridy@ci.capitola.ca.us)
Sent: Friday, October 26, 2018 5:12 PM
To: 'Greenwaycapitola@gmail.com'; [REDACTED]
Cc: Goldstein, Jamie (jgoldstein@ci.capitola.ca.us); 'Tony Condotti'
Subject: UPDATE: Oct. 25 Form 460

Greenway Capitola,

I have been advised by the FPPC that as Elections Official, I am required by state law to report any apparent filing violations. To avoid putting your committee in this position, I strongly encourage you to consider filing a change of status to a controlled committee for this election cycle. I know your intent is to grow into a general committee weighing in on numerous local issues, and Greenway Capitola has made strides in that direction. However, based on the following direction from Form 410 Statement of Organization, I believe you should file as a controlled committee at this time:

A committee is controlled if the officeholder, candidate, or proponent, his/her agent, or any other committee he/she controls, has a significant influence on the actions or decisions of the committee.

I just spoke with a representative of the committee who agreed that this approach will clear up any concerns, and will come in early next week with the amended status filing. I have no intent to level any fines or complaints, and appreciate your cooperation. The goal is simply to provide citizens with correct, transparent information.

I've also been advised regarding the legal fees that showing an estimate on Schedule F (unpaid bills) is the best approach, so when payment is made by any entity there is a record.

We will continue to keep in touch and work together on these often complicated filings.

Linda Fridy
City Clerk
City of Capitola
lfridy@ci.capitola.ca.us
831.475.7300 ext. 228



Please note that email correspondence with the City of Capitola, along with attachments, may be subject to the California Public Records Act, and therefore may be subject to disclosure.

From: Fridy, Linda (lfridy@ci.capitola.ca.us)
Sent: Friday, October 26, 2018 3:02 PM
To: 'Greenwaycapitola@gmail.com' <Greenwaycapitola@gmail.com>; [REDACTED]
[REDACTED]
Cc: Goldstein, Jamie (jgoldstein@ci.capitola.ca.us) <jgoldstein@ci.capitola.ca.us>; 'Tony Condotti' <tcondotti@abc-

law.com>

Subject: Oct. 25 Form 460

Greenway Capitola,

I received your Form 460 filing for the period Sept. 23-Oct. 20 and noted some items raise questions and likely require an amendment. Page 4 is a continuation sheet for Schedule D, but page 3 is not the first page of that schedule, which should have the summary total of all pages. I found it on page 6. Pages 7 and 8 (Schedule E) have no description of payment or what campaign(s) the item supports, and appear to conflict with some totals listed for independent expenditures on Schedule D. I realize I did not ask for descriptions for the Sept. 27 filing, assuming the literature and postage were related to Measure L. But now at least some expenses related to Measure L are being reported as "independent expenditures."

Also, the Capitola City Council received an email from a resident saying that someone walking in support of Measure L said he was a student being paid and asked about finances. She was pointed to Form 460 filings. Where is that expense reported? I also do not see legal fees, which if not invoiced likely should appear as estimates on Accrued Expenses (Unpaid Bills) Schedule F.

This relates to my earlier concerns about the general purpose committee filing status: On page 6 you list a number of independent expenditures for Measure L including signs and mailers. Independent expenditures are made without cooperation or consultation, and your treasurer is the proponent for Measure L. Since there is no separate controlled measure committee and everyone I've encountered associated with Measure L is also associated with Greenway Capitola, it seems highly unlikely that these expenditures qualify as independent or that the committee qualifies, for this election at least, as general purpose. Measure L opponents have raised questions as well. I am asking the FPPC if these are questions I should try to resolve or if that is the agency's jurisdiction. I will be in touch when I get a response.

Meanwhile, I wanted to highlight inconsistencies that address questions I've been asked and that I had reviewing the filing. Feel free to contact me.

Linda Fridy
City Clerk
City of Capitola
lfiddy@ci.capitola.ca.us
831.475.7300 ext. 228



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Fridy, Linda (lfridy@ci.capitola.ca.us)

From: Fridy, Linda (lfridy@ci.capitola.ca.us)
Sent: Friday, September 28, 2018 4:14 PM
To: 'Greenwaycapitola@gmail.com'
Cc: Goldstein, Jamie (jgoldstein@ci.capitola.ca.us)
Subject: committee status

Capitola Greenway,

My apologies for yesterday's urgent message and thank you for a prompt response from Victor Marani. I have confirmed that as a general purpose committee you are not required to file the 24-hour Form 497 and no fines will be levied. I was incorrectly thinking there was a threshold above which a general purpose committee must file as if it were primarily formed.

As I discussed with Mr. Marani, upon reviewing Fair Political Practice Commission's guidelines for general committees, I found the threshold appears to relate to a required change in committee type status. I understand the committee will soon be conducting a scheduled review to see if a change of filing type is needed.

Here's the language from the guidelines:

A committee is primarily formed if:

- The committee is formed or exists to support or oppose a single state or local candidate;
- The committee is formed or exists to support or oppose a group of specific local candidates on the same ballot;
- The committee is formed or exists to support or oppose a single ballot measure or two or more measures being voted on in the same election; or
- The committee makes more than 70 percent of its total contributions and expenditures to support or oppose a single candidate or a group of specific local candidates on the same ballot, or to support or oppose a single measure or two or more measures being voted on in the same election.

It goes on to read:

Reviewing Committee Type Status

Committee treasurers must review the committee's expenditures to ensure that the committee is filing as the correct committee type. A general purpose committee may become a primarily formed committee if its activity is focused on a specific candidate(s) or ballot measure(s).

I appreciate your attention to maintaining the proper filing status and understand that the committee's long-term goals are to address and support a broad range of topics and election issues.

Here's the link to whole FPPC document I reference:

<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Manuals/Manual%204/Manual%204%20Ch%201%20What%20is%20a%20GP%20Committee.pdf>

Again, my apologies for the initial misreading. We'll keep in touch as we all continue to navigate FPPC requirements.

Linda

Linda Fridy
City Clerk

PRO

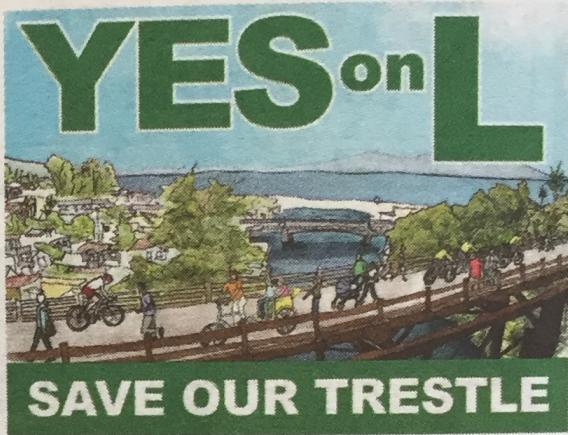
Vote YES on L: *Save Our Trestle Bridge*

Submitted by Gayle McNulty

At Vision Capitola meetings, without question, most participants favored a trail only option through Capitola. Personally, I agree. I'm also supporting YES on L because I do not believe any type of train will ever be economically or financially feasible in Santa Cruz County. And, I do not want to see major changes to our historic trestle, an icon in our community. I believe most Capitolans agree with me. Please vote YES on L." — Gayle Ortiz

"This newspaper has long supported the idea of a trail ... We've also voiced strong doubts that passenger rail of any sort will pan out financially for our region... We recommend voters approve Measure L." — Santa Cruz Sentinel

A YES on L vote means you:



- Express your desire for a bike, e-bike and pedestrian trail on the historic Capitola trestle, because there is physically not room for both a train and trail.

"Yes on L" page 18



YES on L supporters (from left): Sam Storey, Elisabeth Bertrand, Mick Routh, Nels Westman, Susan Westman, Ted Burke, Gayle Ortiz, Kym Dewitt, and Molly Graessle